Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Application of	)	
	)	
TELEPHONE AND DATA SYSTEMS, INC.	)	
	)	File No. 10209-CL-P-715-B-88
For Authority To Construct and	)	
Operate a Domestic Cellular	)	
Radio Telecommunications System	)	
On Frequency Block B To Serve	)	
Wisconsin RSA #8 - Vernon	)	

CONTINGENT APPLICATION FOR REVIEW

Telephone and Data Systems, Inc. ("TDS"), by its attorneys, hereby files a "Contingent Application for Review" concerning one aspect of the Common Carrier Bureau's ("the Bureau's") Order on Reconsideration ("Order") (DA 90-1917), released January 15, 1991. The Order affirmed the grant of TDS's application and, if no other party files an Application for Review, TDS will dismiss this one. If, however, any other parties seek Commission review of the Order, we would ask the Commission also to review the issue raised here.

Reasons Warranting Relief And Request For Relief

TDS seeks review pursuant to Section 1.115(b)(2)(i) and (b)(2)(ii) of the Commission's Rules, which state respectively that review may be sought if a staff action is in conflict with [a Commission] regulation, case precedent or established Commission policy or if "the action involves a question of law or policy which

has not previously been resolved by the Commission."

In the Order, the Bureau affirmed the grant of TDS's application in Wisconsin RSA #8 by the Mobile Services Division.[1] However, the Bureau also held (Order, Para. 7) that a violation of Section 22.921(b)(1) of the FCC's Rules had occurred when UTELCO, Inc., which is a local exchange telephone company in Wisconsin RSA #8 in which TDS holds a 49% interest but which had not applied to provide cellular service in the RSA, had been admitted into a settlement agreement by certain other wireline applicants in Wisconsin RSA #8. Section 22.921(b)(1) prohibits a party from having "an ownership interest, direct or indirect, in more than one" application in the same market.

However, in concluding that there was a violation (albeit technical) here, the Bureau did not discuss the fact that never previously had a violation of Section 22.921(b)(1) been found to occur except where the forbidden cross interests existed among initial applicants at the time they filed their applications. Nor had the FCC ever held or implied that a settlement agreement, whether between applicants or among applicants and non-applicants, could create the type of interests which are proscribed by Section 22.921(b)(1). In view of the Commission's strong policy favoring wireline settlements, we submit that it is far better policy to hold that settlement agreement do not create the "interests"

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[1] See also Telephone and Data Systems, Inc., 4 FCC Rcd 8021 (M.S.D. 1989) ("the MSD Order").

covered by Section 22.921(b)(1), as the MSD had earlier ruled, rather than proceeding, as to the Bureau did here, by finding a violation and then not imposing a sanction on TDS. As we show below, the position we advocate is also far more consistent with the text of the Commission's rules than is the Bureau's unexplained interpretation.

We ask that the FCC reconsider and rule on the question of whether the action of UTELCO and the other settling parties violated Section 22.921(b)(1).

Accordingly, TDS requests that the Commission (a) grant this Contingent Application For Review; and (b) rule that Section 22.921(b) was not violated in the circumstances of this case.

I. Section 22.921(b)(1) of The FCC's Rules Has Not Been Violated In this Case

Though the Bureau, at Paragraph 7 of the Order, held that "a violation of Section 22.921(b) occurred when UTELCO entered into the partial settlement agreement," it furnished no reasons or arguments to support this conclusion. Instead, the Bureau discussed the reasons why, despite that finding, TDS's application should not be dismissed. The Bureau's failure to support its holding is instructive. It demonstrates the impossibility of showing that wireline settlement agreements create any form of ownership interests which are cognizable under Section 22.921(b)(1). As TDS has previously shown in its Reply to the Petition To Deny and Opposition to the Petition For Reconsideration, and will demonstrate again below, neither the

settlement agreement at issue here nor any other wireline settlement agreement can create such interests.

Section 22.921(b)(1) of the FCC's Rules provides, in pertinent part, that:

> "No party to a wireline application shall have an ownership interest, direct or indirect, in more than one application for the same Rural Service Area, except that interests of less than one percent will not be considered. (emphasis added)."

As is acknowledged by all parties to this case, TDS filed an application to serve Wisconsin RSA #8 and UTELCO did not file an application for that RSA. TDS also had no interest in any other wireline applicant in Wisconsin RSA #8 when the initial applications were filed. When UTELCO, in which TDS has an interest, did not file, Section 22.921(b)(1) was met.

However, the Bureau has apparently (although it does not explicitly say so) accepted the argument offered by the petitioners below, that because non-applicant UTELCO signed a post-filing settlement agreement with certain applicants in the RSA, TDS thereby acquired a derivative pro rata 3.5% interest in the applications of each of the participants in the settlement agreement, as well as maintaining a 100% interest in its own application, thus giving rise to a violation of Section 22.921(b)(1).

As the Bureau recognized (Order, Paragraph 5), the basic context in which this case arises derives from the Commission's policy favoring wireline settlement agreements. From the beginning, the Commission has repeatedly and consistently held that

pre and post filing settlement agreements among wireline applicants, in MSAs and RSAs, serve the public interest and are encouraged.[2] Indeed, the policy favoring settlements was a important factor in the Commission's decision to retain the wireline set-aside when the Commission adopted cellular lotteries.[3] Section 22.921(b)(1), the FCC's cellular cross interest rule, has been in existence since 1984,[4] that is, during the period when the Commission has encouraged and implemented wireline settlement agreements, and neither the Commission nor the Bureau had ever held or implied until now that pre-lottery wireline settlement agreements create the type of "ownership interests" which Section 22.921(b)(1) was intended to cover.

If settlement agreements could be considered to create the type of interests which are subject to Section 22.921(b)(1), then that rule would necessarily have had an exception to permit settlement-created "interests," since such interests are favored by the Commission. But there is no such exception for cross interests under Section 22.921, as there is for "major changes" in ownership

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2 See, e.g., Cellular Communications Systems (Cellular Reconsideration Order, 89 FCC 2d 58, 76 (1982); Cellular Lottery Order, 56 R.R. 2d 8, 27 (1984); Cellular Radio Lotteries (Order on Reconsideration), 101 FCC 2d 577, 588 (1985); Cellular Service (Settlements and Changes of Ownership), 59 R.R. 2d 1450 (C.C. Bur. 1986); Rural Cellular Service (Third Report and Order), 64 R. R. 2d 1383, 1386 (1988): Rural Cellular Service, 64 R.R. 2d 1637 (C.C. Bur. 1988).

3 Cellular Lottery Order, 56 R.R. 2d, at 24.

4 See Cellular Lottery Order, 56 R.R. 8, 38-39 (1984).

under Section 22.23.[5] Consequently, "interests" created by settlement agreements, including UTELCO's "interests" in issue here, are not cross-interests covered by Section 22.921.

Nowhere until this case had the Commission or Common Carrier Bureau held that a violation of Section 22.921(b)(1) might be found as the consequence of any settlement arrangement, whether between applicants, or between applicants and a non-applicant, as is the case here. The other cases decided by the Commission and the Bureau in which violations of Section 22.921(b)(1) have been found to exist were all involved forbidden cross-interests among initial applicants.[6] Those cases have nothing whatever to do with interests created by settlement agreements and do not support the Bureau's holding here.

Section 22.921(b)(1), by its terms, forbids any party from holding a forbidden cross interest in more than one application for the same RSA. Applications are of course filed only by applicants.

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5 Generally, major changes in the ownership of applicants cause their applications to be treated as "newly filed," and therefore subject to dismissal if the change in ownership post-dates the filing deadline. See Sections 22.23(c)(4) and 22.23(g) of the Commission's Rules. However, in 1984 an exception was created by Section 22.23(g)(4) to permit "major changes" caused by settlement agreements to be made without treating the applications as "newly filed."

6 Progressive Cellular III B-3, DA 91-68, Mobile Services Division, released January 31, 1991; Florida Cellular Mobile Communication Corporation, DA 91-34, Mobile Services Division, released January 18, 1991; MV Cellular, Inc., 103 FCC 2d 414, 418-20 (1986); Portland Cellular Partnership, 2 FCC Rcd 5586, 5587, (MSD 1987) aff'd 4 FCC Rcd 2050 (FCC) 1989); and Henry County Telephone Company, et al. Mimeo No. 2747 (C.C. Bur., released February 21, 1986).

Thus, the ownership interests forbidden by the Rule can arise only as a consequence of the filing of an application. If no application has been filed, no interest can be created which is cognizable under the Rule. The Rule does not discuss settlement agreements or any interests which may be created by them. Accordingly, it cannot reasonably be construed to include such interests. This was the reasoning adopted in the MSD Order and the MSD was correct.

This analysis is also supported by previous Commission treatment of Section 22.33(b) of the Commission's Rules.[7] That section allows wireline applicants to enter into partial settlement agreements which receive the "cumulative lottery chances." Those "cumulative chances" have not been regarded as equivalent to giving settling parties ownership interests in each other's applications,

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[7] In relevant part, Section 22.33(b) reads as follows:

> (b) Cumulative chances of partial cellular settlements. (1) Top-120 Markets. The joint enterprise resulting from a partial settlement among mutually exclusive cellular applicants for any one of the top-120 cellular modified Metropolitan Statistical Areas, if entered into after the filing of individual applications by its members, will receive the cumulative number of lottery chances that the individual applicants would have had if no partial settlement had been reached.
>
> (2) Markets Beyond the Top-120 and Rural Service Areas. In markets beyond the top-120 cellular modified Metropolitan Statistical Areas, the cumulative lottery chances described in paragraph (b)1(1) of this section will be awarded to joint enterprises resulting from partial settlements among mutually exclusive wireline applicants only. ....

or else those applications would be subject to dismissal under Section 22.921(b). Such ownership interests come into existence only when, subsequent to the lottery, the lottery winner amends its application to substitute the entity whose formation was contemplated by the settlement agreement. And, as the Commission has held, the Commission's Rules do not require winning applicants to amend their applications to implement settlement agreements, as they would logically have to if settlement agreements created "contingent" ownership interests. See American Cellular Network Corp. of Nevada, 63 R. R. 2d 1313 (1987).

And, this reasoning applies a fortiori where the interests said to be created by the relevant settlement agreement arise not as a consequence of the actions of the applicant said to have acquired the interest, namely TDS, but rather as a result of the actions of non-applicant UTELCO, in which TDS holds a minority interest, and those other applicants seeking the dismissal of TDS's application.

Moreover, it is fair and reasonable for the FCC to interpret Section 22.921(b)(1) so as to hold applicants and only applicants responsible for any forbidden cross-interests that may exist among them. All applicants are on notice about what the rules require, and can take whatever steps are necessary to comply with the Rules. However, it is not comparably fair or reasonable to hold an applicant responsible for a settlement agreement reached by a non-applicant company, including one in which the applicant may have a minority ownership position, with other applicants.

As noted above, the FCC never said or even intimated prior to the Order that Section 22.921(b)(1) was intended to cover the interests created by settlement agreements, let alone interests arguably created by the actions of non-applicants signing such agreements. Before imposing the draconian sanction of dismissal, which is what the petitioners sought in this case and may seek on review, due process and fundamental fairness would require that the standard prescribed by a Commission rule be clear and readily ascertainable. See Radio Athens, Inc. (WATH) v. FCC, 401 F. 2d 398, 404 (D.C. Cir. 1968) (FCC dismissal of radio station application reversed when the application of the broadcast cross-ownership rule to applicant was ambiguous); Salzer v. FCC, 778 F. 2d 869, 875 (D.C. Cir. 1985) (FCC dismissal of LPTV applications reversed when standard for application acceptance was unclear); Maxcell Telecom Plus, Inc. v. FCC, 815 F. 2d 1551, 1560 (D.C. Cir. 1987) (FCC provided insufficient notice of filing requirements before dismissing cellular "fill in" application). Section 22.921(b)(1) would certainly not have met the required standard of clarity in 1989 if TDS were now held to have violated the rule, especially in light of the MSD's holding in 1989 that Section 22.921(b)(1) was not violated by the entry of UTELCO into the settlement group. TDS should certainly not be held to a higher standard of interpretive knowledge of the FCC's rules than the Mobile Services Division.

The Bureau recognized the unfairness of applying its current understanding of the rule to TDS when it held that it would not

dismiss TDS's application. However, the Bureau's refusal to dismiss TDS's application, while certainly justified and indeed necessitated by the due process concerns discussed above, is a solution to a non-problem, as no rule violation has occurred.

Conclusion

For the foregoing reasons, TDS requests that the Commission reverse the Bureau and rule that Section 22.921(b)(1) of its rules was not violated by UTELCO's entry into the settlement agreement.

Respectfully submitted,

TELEPHONE AND DATA SYSTEMS, INC.

By: Alan Y. Naftalin PC
Alan Y. Naftalin

Peter M. Connolly

Koteen & Naftalin
1150 Connecticut Ave., N.W.
Washington, D.C. 20036

Its Attorneys

February 15, 1991

Certificate of Service

I, Theresa Belser, a secretary in the offices of Koteen & Naftalin, hereby certify that I have served a true copy of the foregoing "Contingent Application For Review" on the following, by First Class United States mail, this 15th day of February, 1991:

Kenneth E. Hardman, Esq.
2033 M Street, N.W.
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Washington, D.C. 20036

Theresa Belser

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Application of	)	
	)	
TELEPHONE AND DATA SYSTEMS, INC.[1]	)	
	)	
For Authority To Construct And Operate A Domestic Public Telecommunications System On Frequency Block B To Serve Wisconsin RSA #8 - Vernon	)	File No. 10209-CL-P-715-B-88

OPPOSITION TO APPLICATION FOR REVIEW

Telephone and Data Systems, Inc. ("TDS"), by its attorneys, hereby files its Opposition to the Application For Review filed by Century Cellunet, Inc. and other wireline applicants in Wisconsin RSA #8 - Vernon (hereafter "Settling Parties").

For the reasons discussed in TDS's "Contingent Application For Review," filed February 25, 1991, and those given below, Settling Parties' Application For Review should be denied and TDS's construction permit grant should be affirmed.

I. The Bureau's Opinion Reflected The Correct Belief That It Would Be Inequitable and Contrary to Law To Dismiss TDS's Application

In our Contingent Application For Review, TDS demonstrated that the Common Carrier Bureau erred in holding that a technical violation of Section 22.921(b)(1) had occurred when UTELCO, Inc.

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[1] On March 21, 1991, the FCC was notified of the consummation of the pro forma assignment of Telephone and Data Systems, Inc.'s license in Wisconsin RSA #8 - Vernon to its wholly owned subsidiary Wisconsin RSA #8, Inc. See File No. 08426-CL-AL-1-91.

entered into a settlement agreement with Settling Parties. As we showed, parties to a settlement agreement are not given an "ownership interest" in each others' applications within the meaning of Section 22.921(b)(1). We will not repeat that argument here, though we incorporate it by reference.

However, though the Bureau's reasoning concerning Section 22.921(b)(1) was mistaken, its decision not to dismiss TDS's application was manifestly correct.

UTELCO was not an applicant in Wisconsin RSA #8. Its admission into Settling Parties' settlement group cannot now be considered a basis for requiring the dismissal of TDS's application pursuant to a rule which, by its terms, covers only interests held in applications. Section 22.921(b)(1) does not, in terms, refer to contingent "interests" created by settlement agreements and does not do so by logical implication, as the Mobile Services Division agreed the first time it reviewed this matter. And, as we have discussed in our Contingent Application For Review, the standard prescribed by rules requiring the dismissal of applications must be clear and unambiguous. The possible application of Section 22.921(b)(1) in this context was anything but clear, as the MSD recognized in holding that it did not apply. The Common Carrier Bureau also implicitly recognized this in refusing to dismiss TDS's application despite finding that the rule had been violated. And no court would ever hold an applicant to a higher standard of knowledge concerning the application of a rule than that possessed by the agency which promulgated and enforced the rule.

However, Settling Parties have refused to recognize that it would be inequitable and unfair to require the dismissal of TDS's application because of a settlement agreement which they entered into with a non-applicant in which TDS holds a minority interest. Rather, they have persistently asserted, in addition to their strictly legal arguments, that they have been the victims of deception, unfairness and "bad faith" on the part of TDS. These claims, however, are entirely specious.

It is a fact that TDS did not sign the Wisconsin RSA #8 settlement agreement. This may have disappointed Settling Parties, who have devoted much space in their pleadings to self-serving descriptions of the Wisconsin RSA #8 negotiations, but TDS was certainly within its rights not to do so. However, thirteen of the sixteen wireline applicants in the RSA did sign the settlement agreement and so it was likely that a member of the settlement group would win the lottery. But TDS happened to win, and it is that event, not any "deception" or "bad faith" on TDS's part, which is the actual source of Settling Parties' chagrin.

Settling parties have maintained, in essence, that they permitted UTELCO into their settlement group only on the understanding that TDS would also sign the settlement agreement. In short, they argue that TDS' entry into the settlement group would have been the "consideration" for UTELCO's participation. But if that was the case, then if a member of the settlement group had won the lottery, UTELCO could simply have been excluded from the licensee partnership. As Settling Parties know, the FCC never

would have enforced a claim by UTELCO of entitlement to participation in the licensee partnership,[2] and, if Settling Parties are right about the circumstances under which UTELCO signed the agreement, then neither would any state court have held that UTELCO had a right to inclusion. Settling Parties' whining about "bad faith" and their bogus calculations (Application For Review, p. 11) of the "dilution" of their interests in their own settlement group as a consequence of UTELCO's entry into it, ignore the essential fact that UTELCO had no interest in Settling Parties' applications and would have had no interest in their licensee partnership unless one of their number had won the lottery and they then chose to give UTELCO such an interest. There was no unfair "skewing" of the lottery of the kind that Section 22.921(b)(1) was intended to prevent, as such skewing could take place only if the forbidden cross-interests existed among lottery participants.[3] UTELCO was not a lottery participant and could have been excluded from the licensee partnership at Settling Parties' option. If Settling Parties were, in fact, treated unfairly by TDS (which we have denied) and had one of them won the lottery, then they obviously had it within their power to rectify any such "injustice" by excluding UTELCO. But none of them did win and that was no more

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2 See American Cellular Network Corp. of Nevada, 63 R.R. 2d 1313 (1987).

3 Every case cited by Settling Parties (Application For Review, p. 13) in which a violation of Section 22.921(b)(1) was found to require the dismissal of an application involved forbidden cross interest among applicants.

an "injustice" than when a coin comes up "heads" instead of "tails."

II. The Settlement Agreement Never Became Operative and Hence Did Not Create Any Interests or Obligations For Anyone

Settling Parties assume that UTELCO's entry into their settlement agreement both gave TDS a forbidden interest in their applications and created obligations on their part toward UTELCO.

However, the Wisconsin RSA #8 settlement agreement, by its terms, has never become operative and therefore cannot create rights or obligations for its signatories, let alone non-parties.

Section 6(a) of the Agreement, previously submitted by UTELCO, provides, in pertinent part:

> "Within seven days following the FCC's announcement of the lottery results..., the lottery winner shall file with the FCC the paper original and two hard copies of its application."

Section 6(c) provides:

> "In the event a full settlement is not reached in the RSA and a lottery is held, each Party agrees that, in the event this agreement is approved by the FCC, if such approval is required, and the application of a Party to this agreement is selected by the FCC, said Party shall assign its right in the construction permit to the Partnership, contemplated hereby, and other parties to this agreement shall not pursue their applications or take any action to seek dismissal of an application of any other Party to this agreement."

Thus, if a full settlement in the RSA was not reached, as it was not, the triggering event giving rise to the parties' obligations and rights under the agreement was a victory by one of them in the lottery. In the absence of that, the agreement was of no force and effect, for it created no filing obligations on the

part of a lottery winner and thus no right to acquire ownership interests in the eventual permittee on the part of the other signatories.

Settling Parties ignore the fact that the lottery was not won by a party to the agreement and assert, in essence, that although the agreement never became operative and none of the parties to the agreement ever had any duties to perform under it, that TDS, a non-party, somehow gained interests in other applications through the operation of the agreement sufficient to cause TDS's own application to violate the rules, thus warranting its dismissal. Such reasoning is self serving and unsupported by precedent or logic.

"Interests" created by settlement agreements, which may never come into existence, can hardly be held to violate Section 22.921(b)(1), which, by its terms, applies only to interests in "applications" actually filed with the Commission.

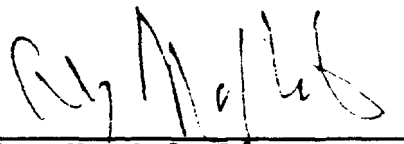
Conclusion

For the foregoing reasons, and those furnished in our "Contingent Application For Review," Settling Parties' Application For Review Should be denied and TDS's construction permit grant should be reaffirmed.

Respectfully submitted,

TELEPHONE AND DATA SYSTEMS, INC.

By: _____
Peter M. Connolly

By: 

Alan Y. Naftalin

Koteen & Naftalin
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March 26, 1991

Its Attorneys

Certificate of Service

I, Theresa Belser, a secretary in the offices of Koteen & Naftalin, hereby certify that I have served a true copy of the foregoing "Opposition" on the following, by First Class United States mail, this 26th day of March, 1991:

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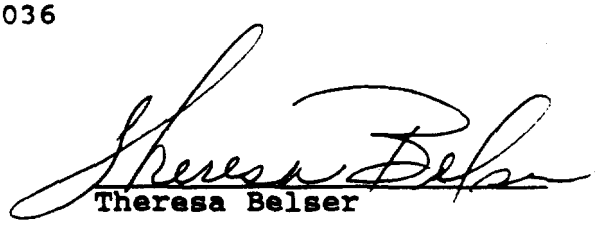

Theresa Belser

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of	)	
	)	
TELEPHONE AND DATA SYSTEMS, INC.	)	No. 10209-CL-P-715-B-88
	)	
For Authority to Construct and Operate a Domestic Cellular Radio Telecommunications System on Frequency Block B to serve the Wisconsin 8 - Vernon Rural Service Area; Market No. 715	)	

To: The Commission, en banc

OPPOSITION TO CONTINGENT APPLICATION FOR REVIEW

Century Cellunet, Inc. (Century), Contel Cellular, Inc. (Contel), Coon Valley Farmers Telephone Company, Inc. (CVF), Farmers Telephone Company (FTC), Hillsboro Telephone Company (HTC), LaValle Telephone Cooperative (LTC), Monroe County Telephone Company (MCTC), Mount Horeb Telephone Company (MHTC), North-West Cellular, Inc. (NWC), Richland-Grant Telephone Cooperative, Inc. (RGTC), Vernon Telephone Cooperative (Vernon) and Viroqua Telephone Company (Viroqua) (hereinafter sometimes referred to collectively as the "Settling Partners"), by their attorney, respectfully oppose the contingent application for review filed in the captioned proceeding on February 15, 1991 by Telephone and Data Systems, Inc. (TDS), seeking reversal in part of the Order On Reconsideration issued by the Deputy Chief, Common Carrier Bureau, DA

90-1917, adopted December 31, 1990 and released January 15, 1991.[1] The Settling Partners respectfully submit that TDS' requested relief is without merit and, accordingly, that its application for review should be denied. In support thereof, the Settling Partners respectfully show:

In its Contingent Application for Review (the "TDS App."), TDS requests the Commission to revisit and reverse the finding in the Recon. Order that the cross-ownership prohibition in Section 22.921(b)(1) of the rules was violated when TDS maintained a separate and independent application for the Wisconsin 8 wireline cellular authorization, while its subsidiary UTELCO, Inc. (UTELCO) joined the settlement group which was attempting to achieve a full market settlement in Wisconsin 8. As its justification, TDS is content to merely reiterate its previous arguments, which were rejected in the Bureau's Recon. Order.

The issues involved have already been briefed at considerable length in the record below,[2] and no useful purpose would be served by restating them in this opposition. The Settling Partners would point out, however, that a major fallacy in TDS' position continues to be its failure to even acknowledge -- much less properly account for -- the implica-

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[1] Telephone and Data Systems, Inc., 6 FCC Rcd 270 (CCB 1991) (hereinafter sometimes cited as the "Recon. Order").

[2] Century Cellunet, Inc., et al., Petition to Dismiss or Deny, July 27, 1989; Petition for Reconsideration, December 14, 1989; Reply to Opposition, January 11, 1990.

tions of UTELCO's status as a subsidiary of TDS. Contrary to its posture here, TDS cannot properly continue to pretend that it has no cognizable ownership relationship with UTELCO, and that it is not properly accountable for the actions of its subsidiary.[3]

Equally meritless is TDS' continued suggestion that it would somehow violate notions of due process to punish TDS for violating Section 22.921 in the circumstances disclosed in this case. Despite TDS' apparent difficulty in comprehending the nature of its transgression, it does not require rocket science to understand that its actions were designed to stack the lottery for Wisconsin 8 in TDS' favor, and that such schemes are precisely what the rule was promulgated to forestall.

Thus, the absence of proper notice of proscribed conduct is not a factor in this case. Rather, TDS' argument actually translates to the proposition that it should be let off the hook merely because it was the first applicant to think of stacking the lottery in this particular manner. However, when

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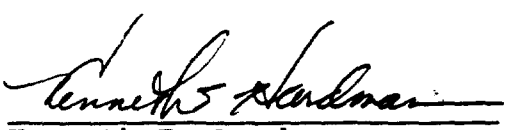
[3] The Settling Partners thus emphatically disagree with TDS' assertion, which typifies its argument herein, that "it is not comparably fair or reasonable to hold an applicant responsible for a settlement agreement reached by a non-applicant company, including one in which the applicant may have a minority ownership position, with other applicants." (TDS App. at p. 8). TDS' characterization obviously does not fairly reflect its true relationship to UTELCO, and it is precisely the fact that UTELCO is a subsidiary of TDS which makes it not only "fair and reasonable," but also obligatory for regulatory purposes to hold TDS accountable for the actions of its subsidiary.

it adopted the rule the Commission acknowledged the ability of a "creative applicant" to think up a novel way of improperly skewing the lottery, and it unequivocally pledged nonetheless that it "will not allow parties who attempt to circumvent our lottery procedures to obtain a cellular license".[4]

It is time for the Commission to back up its promise. Accordingly, TDS' plea to be exonerated for its conduct should be categorically rejected.

Respectfully submitted,

CENTURY CELLUNET, INC.
CONTEL CELLULAR, INC.
COON VALLEY FARMERS TELEPHONE COMPANY, INC.
FARMERS TELEPHONE COMPANY
HILLSBORO TELEPHONE COMPANY
LAVALLE TELEPHONE COOPERATIVE
MONROE COUNTY TELEPHONE COMPANY
MOUNT HOREB TELEPHONE COMPANY
NORTH-WEST CELLULAR, INC.
RICHLAND-GRANT TELEPHONE COOPERATIVE, INC.
VERNON TELEPHONE COOPERATIVE
VIROQUA TELEPHONE COMPANY

By 
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Their Attorney

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March 26, 1991

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[4] Cellular Radio Lotteries, 101 F.C.C.2d 577, 600 (FCC 1985). (Emphasis added).